

AMENDED IN SENATE AUGUST 7, 2006

AMENDED IN SENATE JUNE 26, 2006

AMENDED IN SENATE JUNE 15, 2006

AMENDED IN SENATE JUNE 14, 2006

AMENDED IN SENATE JUNE 12, 2006

AMENDED IN ASSEMBLY MARCH 28, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2343

**Introduced by Committee on Agriculture (Matthews (Chair),
Maze (Vice Chair), Canciamilla, Cogdill, Parra, Salinas, and
Vargas)**

February 23, 2006

An act to amend Sections 61384, 62095.1, 62521, 62560, 62561, 62563, 62564, 62574, and 62707 of, and to add Section 62580.5 to, the Food and Agricultural Code, relating to milk.

LEGISLATIVE COUNSEL’S DIGEST

AB 2343, as amended, Committee on Agriculture. Milk producers’ security trust fund.

Existing law confers upon the Secretary of Food and Agriculture the ability to establish and administer the Milk Producers Security Trust Fund to protect producers against loss of payment for bulk milk. Existing law provides that security charges may be collected by the secretary until he or she determines that the value of the fund approximates 110% of the dollar amount of the total purchases of milk

being paid for and received in one month by the handler with the largest payment obligation to producers for that month.

This bill would instead provide that security charges shall only be collected until January 1, 2007, and that the fund cash shall be maintained at \$30,000,000. If the fund cash falls below \$30,000,000, the secretary may resume collecting security charges in order that the fund cash is maintained at that level. This bill would also provide that if in any month 110% of a handler's average monthly milk purchases exceed \$30,000,000 the secretary shall require that handler to provide acceptable securities, as defined, *within 10 business days of notice*. This bill would provide that when acceptable securities in the required amount, as specified, are provided, the secretary shall not collect security charges from that handler. This bill would provide that shipments to handlers who fail to provide acceptable securities will be listed as ineligible for coverage under the fund, *will be charged enhanced security charges, and may have their license suspended, revoked, or conditioned*. The bill would make related changes.

Existing law specifies the amount of security charges in mills per pound of product each handler is obligated to pay into the Milk Products Security Trust Fund.

This bill would decrease the mills per pound paid by handlers, as specified.

Existing law provides that any handler subject to any milk pooling plan, as specified, that receives milk that is not subject to the calculation of producer prices, as specified, shall be obligated to pay the security charges for any portion of that milk that is assigned to class 1, class 2, and class 3 usage.

This bill would change these provisions to also include milk that is assigned to class 4a and class 4b usage.

Existing law provides that any handler receiving milk that is not subject to any pooling plan, as specified, shall be obligated to remit security charges for class 1, class 2, and class 3 products, and may deduct the security charges from the minimum prices to be paid to producers.

This bill would change these provisions to also include class 4a and 4b products.

Existing law makes it unlawful for any retailer, and other specified entities to sell milk, cream or any dairy products at less than cost. Existing law further provides that it is unlawful for a handler to

directly or indirectly pay less than the minimum producer price established under the applicable stabilization and marketing plan.

This bill would provide that these prohibitions do not apply to sales of bulk milk between handlers.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 61384 of the Food and Agricultural
2 Code is amended to read:

3 61384. (a) The sale by any retailer, wholesale customer,
4 manufacturer, or distributor, including any producer-distributor
5 or nonprofit cooperative association acting as a distributor, of
6 milk, cream, or any dairy product at less than cost is an unlawful
7 practice. This subdivision applies to finished products, and does
8 not apply to sales of bulk milk between handlers.

9 (b) For the purposes of this section, the following terms have
10 the following meanings:

11 (1) "Cost," as applied to manufacturers and distributors, means
12 the total consideration paid or exchanged for raw product, plus
13 the total expense incurred for manufacturing, processing,
14 handling, sale, and delivery.

15 (2) "Cost," as applied to wholesale customers, means the
16 invoice price charged to the wholesale customer, or the expense
17 of replacement, whichever is lower, plus the wholesale
18 customer's cost of doing business.

19 (3) "Cost of doing business," as applied to wholesale
20 customers, means a wholesale customer's total operating expense
21 divided by the customer's total sales income.

22 (4) (A) Except as provided in subparagraph (B), "total
23 consideration paid or exchanged for raw product," in the case of
24 market milk or market cream, means the applicable minimum
25 price of the market milk or market cream, if any, payable by
26 distributors to producers pursuant to stabilization or marketing
27 plans in effect pursuant to Chapter 2 (commencing with Section
28 61801).

29 (B) Notwithstanding subparagraph (A), in situations involving
30 sales on a bid basis to public agencies or institutions, the
31 definition in subparagraph (A) shall only apply to market milk or

1 market cream that is utilized for class 1 purposes, as those
2 purposes are defined in Chapter 2 (commencing with Section
3 61801).

4 (c) Proof of cost, based on audits or surveys conducted in
5 accordance with generally accepted accounting principles as
6 defined by the American Institute of Certified Public
7 Accountants and the Financial Accounting Standards Board, and
8 modified, if necessary, to satisfy the requirements of this section,
9 shall establish a rebuttable presumption of that cost at the time of
10 the transaction of any sale. This presumption is a presumption
11 affecting the burden of proof, but it does not apply in a criminal
12 action.

13 (d) Nothing in this section shall be deemed to prohibit any of
14 the following activities:

15 (1) The meeting, in good faith, of a lawful competitive price or
16 a lawful competitive condition.

17 (2) A distributor's action in making conditional sales of
18 equipment or other property, extending credit for merchandise
19 purchased, or paying a customer's obligations not otherwise
20 prohibited by this chapter to another distributor in connection
21 with the transfer of the customer's business from the latter to the
22 former.

23 (e) The secretary shall establish, by regulation pursuant to
24 Section 61341, the procedures which shall be used to make the
25 determinations required by this section, including the following:

26 (1) Any modifications to the generally accepted accounting
27 principles described in subdivision (c) necessary to satisfy the
28 requirements of this section.

29 (2) Procedures for evaluating efforts to meet lawful
30 competitive prices or conditions.

31 (3) Other procedures necessary or appropriate to facilitate the
32 application or enforcement of this section.

33 SEC. 2. Section 62095.1 of the Food and Agricultural Code is
34 amended to read:

35 62095.1. The payment by a handler, either directly or
36 indirectly, of less than the minimum producer price established
37 under the applicable stabilization and marketing plan adopted
38 pursuant to this chapter, is an unlawful trade practice. This
39 section does not apply to sales of bulk milk between handlers.

1 SEC. 3. Section 62521 of the Food and Agricultural Code is
2 amended to read:

3 62521. For purposes of this chapter, the following terms
4 mean:

5 (a) "Acceptable security" means a surety bond from an
6 admitted surety insurer, deposits of government securities, a
7 letter of credit, or other form of performance guarantee
8 acceptable to the secretary and meeting the requirements as
9 acceptable security pursuant to law. Letters of credit *and any*
10 *other instrument* used as acceptable security shall contain
11 provisions the secretary may prescribe, shall have an effective
12 life of no less than five years, shall be verified to the secretary as
13 effective by September 1 of each year preceding each calendar
14 year for which the ~~letter of credit instrument~~ serves as security,
15 shall name the secretary as the beneficiary of the ~~letter of credit~~
16 *instrument*, shall be clean and irrevocable, and shall provide that
17 the secretary may draw upon it up to the total amount in the event
18 of a handler payment default. ~~Any other instrument offered by a~~
19 ~~handler as acceptable security shall be effective and enforceable~~
20 ~~by the secretary for a term of not less than 12 months, and shall~~
21 ~~be verified as effective by September 1 of the year preceding the~~
22 ~~calendar year for which it shall serve as security interest accrued~~
23 ~~by the instrument shall be the property, and for the benefit, of the~~
24 ~~handler posting the instrument.~~ Acceptable securities provided to
25 the secretary shall not be released by the secretary unless the
26 handler's average monthly purchases, as determined annually by
27 the secretary, fall below thirty million dollars (\$30,000,000).

28 (b) "Board" means the Milk Producers Security Trust Fund
29 Board.

30 (c) "Covered milk" means milk that would, in the event of a
31 default in payment by the purchasing handler, qualify for
32 coverage under Article 5 (commencing with Section 62580) of
33 Chapter 2.5 of Part 3.

34 (d) "Fund" means the Milk Producers Security Trust Fund
35 created pursuant to Section 62506.

36 (e) "Fund cash" means the combined value of the security
37 charges collected pursuant to Section 62561 and any increments
38 received pursuant to Section 62573.

(f) (1) Except as provided in paragraph (2), “fund surplus” means the portion of fund cash at any particular time that consists of increments received by the fund pursuant to Section 62573.

(2) If payment of producer claims pursuant to Article 7 (commencing with Section 62620) reduces the fund cash to thirty million dollars (\$30,000,000), “fund surplus” shall thereafter mean the amount by which the fund cash exceeds thirty million dollars (\$30,000,000).

(g) “Handler” means any person who as owner, agent, broker, or intermediary, either directly or indirectly, receives, purchases, or otherwise acquires ownership, possession, or control of milk in unprocessed or bulk form from a producer or a producer-handler for the purpose of manufacturing, processing, selling, or other handling. It includes cooperative associations that, either directly or indirectly, receive, purchase, or otherwise acquire ownership, possession, or control of milk from other handlers or producers who are nonmembers of the cooperative.

(h) “Milk” means bulk whole milk, bulk reduced-fat milk, bulk lowfat milk, bulk skim milk, bulk condensed skim, and bulk cream, and any other combination of these products which have not had nondairy ingredients added. It does not include milk which has been packaged in bottles, cartons, dispenser cans, or other consumer packages.

(i) “Producer” means any person that produces milk from five or more cows whose bulk milk is received, acquired, or handled by a handler. It includes the nonprofit cooperative associations described in Article 3 (commencing with Section 61871) of Chapter 2 in the sale of milk of its member producers to other handlers.

SEC. 4. Section 62560 of the Food and Agricultural Code is amended to read:

62560. (a) The security charges provided for in Section 62561 shall be collected ~~until January 1, 2007.~~ *until January 1, 2007.* Unless otherwise permitted by this section, the secretary shall thereafter discontinue collection of the security charges. The fund shall consist of the security charges collected, the value of any alternative financial instrument, and acceptable securities provided by handlers pursuant to subdivision (c).

(b) If, after January 1, 2007, payment of producer claims reduces the fund cash below thirty million dollars (\$30,000,000),

the secretary may resume collecting security charges in order that the fund cash is thereafter maintained at thirty million dollars (\$30,000,000). Security charges necessary to return the fund cash to thirty million dollars (\$30,000,000) shall, subject to subdivision (c), be collected from all handlers making purchases of milk, including handlers who have posted acceptable securities pursuant to subdivision (c).

(c) If, in any month, 110 percent of any handler's average monthly milk purchases, computed over the preceding 12 months, unless the increase in value of milk purchases is the result of substantial business expansion or the result of a merger or acquisition, in which case the 12-month computation requirement does not apply, exceeds the fund cash as of the end of that month, the secretary shall require that handler to provide acceptable securities *within 10 working days* in an amount equal to the difference between the fund cash and 110 percent of that handler's average monthly milk purchases. When handlers have provided acceptable securities covering the difference, the secretary shall not collect security charges from those handlers for the portion of their average monthly milk purchases covered by acceptable securities. Shipments to handlers failing to provide acceptable securities within 10 working days of notice by the secretary of the obligation to post acceptable securities, as required by this subdivision, shall be listed by the secretary as ineligible for coverage under the fund pursuant to Section 62586.

(d) The secretary shall calculate the value of milk handlers' average monthly milk purchases at least once each year for those handlers whose previous average monthly milk purchases exceed twenty million dollars (\$20,000,000). *If, as a result of any such calculation, the secretary determines that a handler must provide additional acceptable securities to satisfy the requirements of subdivision (c), that handler shall provide additional acceptable securities within 10 working days of notice by the secretary.*

(e) *In the event a handler fails to comply with subdivision (d):*

(1) Milk purchased by that handler, beginning on the 11th working day following notice by the secretary, will not be eligible for trust fund coverage.

(2) In addition to paying all other amounts required by this chapter, including any security charges then in effect under subdivision (a) of Section 62561, that handler shall pay an

1 *enhanced security charge on all purchased milk to be computed*
2 *as follows:*

3 (A) (i) *One and seven-tenths mills per pound (\$0.0017) for*
4 *class 1 fat.*

5 (ii) *Nine-tenths mills per pound (\$0.0009) for class 1*
6 *solids-not-fat.*

7 (iii) *One-tenth mill per pound (\$0.0001) for class 1 fluid.*

8 (B) (i) *Three and two-tenths mills per pound (\$0.0032) for*
9 *classes 2, 3, 4a, and 4b fat.*

10 (ii) *One and three-tenths mills per pound (\$0.0013) for classes*
11 *2, 3, 4a, and 4b solids-not-fat.*

12 (3) *A handler shall be liable for the enhanced security charges*
13 *required by this section until the handler provides the required*
14 *additional acceptable securities to the secretary. A handler*
15 *failing to post acceptable securities may also be subject to*
16 *revocation, suspension, or nonrenewal or placement of*
17 *conditions upon the milk handler's license pursuant to Sections*
18 *62146, 62149, and 62151.*

19 (f) *In consultation with the Milk Producers Security Trust*
20 *Fund Advisory Board, the secretary may consider and use*
21 *alternative financial instruments, in addition to, or in lieu of,*
22 *using security charges to meet the financial security requirements*
23 *of this section.*

24 SEC. 5. *Section 62561 of the Food and Agricultural Code is*
25 *amended to read:*

26 62561. (a) *The following security charges shall be in effect*
27 *for any period for which the secretary has implemented*
28 *collections under this chapter:*

29 (1) (A) *One and seven-tenths mills per pound (\$0.0017) for*
30 *class 1 fat.*

31 (B) *Nine-tenths mills per pound (\$0.0009) for class 1*
32 *solids-not-fat.*

33 (C) *One-tenth mill per pound (\$0.0001) for class 1 fluid.*

34 (2) (A) *Three and two-tenths mills per pound (\$0.0032) for*
35 *classes 2, 3, 4a, and 4b fat.*

36 (B) *One and three-tenths mills per pound (\$0.0013) for classes*
37 *2, 3, 4a, and 4b solids-not-fat.*

38 (b) *The secretary shall add the security charges to the prices*
39 *established for all classes of milk in accordance with Chapter 2*
40 *(commencing with Section 61801). The secretary is only*

1 authorized by this article to collect security charges on covered
2 milk.

3 SEC. 6. Section 62563 of the Food and Agricultural Code is
4 amended to read:

5 62563. Any handler subject to any pooling plan in effect
6 under Chapter 3 (commencing with Section 62700) shall
7 continue to be obligated for the minimum prices provided for in
8 the stabilization and marketing plans on the pooled usage of the
9 handler. However, any part of the minimum prices that is
10 attributable to the security charges established pursuant to
11 Section 62561 shall be deducted before producer prices are
12 determined under the pooling plan.

13 Any handler subject to the pooling plan that receives milk that
14 is not included in the calculation of producer prices determined
15 under the pooling plan shall be obligated to pay the security
16 charges established pursuant to Section 62561 for any portion of
17 that milk that is assigned to class 1, class 2, class 3, class 4a, and
18 class 4b usage.

19 The amount of any handler's obligation attributable to the
20 security charges established pursuant to Section 62561 shall be
21 remitted by the secretary to the fund by the end of the month
22 following the month the pool calculations were completed.

23 SEC. 7. Section 62564 of the Food and Agricultural Code is
24 amended to read:

25 62564. Any handler receiving milk not subject to any pooling
26 plan in effect pursuant to Chapter 3 (commencing with Section
27 62700) shall be obligated to remit to the secretary any security
28 charges in effect pursuant to Section 62561 for class 1, class 2,
29 class 3, class 4a, and class 4b products produced from the milk
30 and may deduct the security charges from the minimum prices
31 required to be paid to producers.

32 SEC. 8. Section 62574 of the Food and Agricultural Code is
33 amended to read:

34 62574. Immediately following the semiannual payment to the
35 fund of the increment provided in Section 62573, if the secretary
36 determines that there is a fund surplus, the secretary shall transfer
37 an amount equal to the fund surplus to an account administered
38 by the Dairy Marketing Branch of the department to be used to
39 reduce the producer and handler assessments that would
40 otherwise be imposed pursuant to Article 14 (commencing with

1 Section 62211) of Chapter 2. One-half of the fund surplus so
2 transferred shall be used to reduce the obligation of producers
3 and one-half shall be used to reduce the obligation of handlers
4 pursuant to that article.

5 SEC. 9. Section 62580.5 is added to the Food and
6 Agricultural Code, to read:

7 62580.5. Any producer entity, including a nonprofit
8 cooperative that severs a disqualifying beneficial-ownership
9 interest in a handler to which it supplies bulk milk, shall not have
10 trust fund coverage for future milk shipments to that handler for
11 a period of 12 months after notice is given to the secretary of
12 termination of the beneficial ownership interest unless a waiver is
13 granted subject to Section 62587.

14 SEC. 10. Section 62707 of the Food and Agricultural Code is
15 amended to read:

16 62707. The formulation committee shall make
17 recommendations to the secretary for inclusion in the pooling
18 plan, and the secretary shall include in the pooling plan, all of the
19 following:

20 (a) The establishment of one or more pools throughout the
21 state.

22 (b) (1) The base period to be used in determining the
23 production and class 1 usage bases of each producer directly
24 affected by the pooling plan. The base period shall, at the
25 producer's option, be his or her fluid milk production and usage
26 in the pool area during the calendar year 1967 on an average
27 daily basis or his or her production and usage in the pool area
28 during the last six months of 1966 on an average daily basis.

29 (2) As to a producer south and east of San Geronio Pass, his
30 or her production base may, at his or her option, be four times his
31 or her production in the months of December 1966, and January
32 and February 1967.

33 (3) If a producer, during any base period, had a valid contract
34 with a distributor, or as a member of a cooperative association
35 had an allocation, that provided that the distributor or cooperative
36 association was required to accept a larger amount of fluid milk
37 from the producer than the producer actually produced during the
38 period, on proof satisfactory to the secretary of the contract or
39 allocation, the producer may, at his or her option, have the

1 amount specified in the contract or allocation established as his
2 or her production base.

3 (c) The establishment of a class 1 usage for each producer,
4 which shall be the amount of his or her production of fluid milk
5 accounted for as class 1, and any fluid milk sold for use as class
6 1 to a United States military installation but that was not
7 accounted for as class 1.

8 (d) The allocation to each producer within any pool of a pool
9 quota, which, initially, shall be 110 percent of that producer's
10 class 1 usage, as determined in subdivision (c).

11 (e) (1) The determination of new class 1 usage and the
12 allocation of pool quota based thereon in a manner consistent
13 with effectuating the purposes of this chapter.

14 (2) All producers who have not reached the equalization point
15 shall share in the allocation of pool quota on the basis of a
16 formula that gives substantial weight to each producer's
17 production base, but that, at the same time, allocates a larger
18 percentage to hardship cases and low class 1 usage producers.

19 (3) The allocations shall be made on the basis of each
20 individual producer, with each cooperative association
21 considered as a single producer. The cooperative associations of
22 producers shall reassign any new quota to their own members
23 subject to Section 62710.

24 (4) Annually, within no more than four months after August
25 31 of each year, the pool quota shall be adjusted by each
26 component to reflect any additional pool quota. Any increase in
27 pool quota shall be determined from the amount of new class 1
28 and class 2 solids not fat usage that developed during the
29 preceding annual period which exceeded the previous highest
30 identical annual period since the 1988–89 fiscal year.

31 There shall be no downward adjustment of pool quota below
32 the quota initially established pursuant to this chapter.

33 (f) The establishment of production bases and pool quotas for
34 new fluid milk producers who wish to enter the pooling plan after
35 the effective date of the plan. The recommendations of the
36 committee shall be reasonably equitable to both the new
37 producers and to participating producers and consistent with
38 effectuating the purposes of this chapter.

39 (g) The transfer of production bases and pool quotas from one
40 fluid milk producer to another under conditions so designed as to

1 prevent abuses in the transfers and to avoid the development of
2 excessive values for the bases and quotas.

3 (h) Notwithstanding Section 62711, any provision which may
4 be necessary to encourage the availability of market milk for
5 those usages for that class 1 and class 2 milk is mandatory.

6 (i) Any governmental agency that produces, processes, and
7 consumes in its own facilities only its own production shall not
8 be a pool plant. The plant shall operate outside the pool for
9 accounting and settlement purposes unless the plant notifies the
10 secretary of its election to participate in the pool. Any production
11 of such a governmental agency that is transferred or diverted to a
12 pool plant shall be classified for the purpose of settlement at the
13 class 4a or class 4b price, whichever is lower.

14 (j) Any and all other matters necessary and desirable to
15 effectuate the provisions of this chapter.

16 The recommendations of the formulation committee and the
17 pooling plan may provide exceptions from the plan's general
18 application for individual cases of hardship.